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In the Supreme Court of the United States

OCTOBER TERM, 1956

No. 247

THE BRITISH TRANSPORT COMMISSION, PETITIONER

v.

UNITED STATES OF AMERICA, AS OWNER OF THE U. S. N. S. "HAITI VICTORY"

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

BRIEF FOR THE UNITED STATES

OPINION BELOW

The order and opinion of the District Court (R. 58, 59) dismissing cross-claims against petitioner are not reported. The opinion of the District Court (R. 64–71) exonerating the United States from liability is reported at 131 F. Supp. 712. The opinion of the Court of Appeals (R. 77–88) is reported at 230 F. 2d 139.

JURISDICTION

The judgment of the Court of Appeals was entered on February 13, 1956 (R. 88–89). By order of the Chief Justice on April 10, 1956, the time for filing

a petition for a writ of certiorari was extended to July 12, 1956. The petition for a writ of certiorari was filed on July 11, 1956, and granted, limited to the question stated below, on October 8, 1956 (R. 90). 352 U. S. 821. The jurisdiction of this Court rests upon 28 U. S. C. 1254 (1).

QUESTION PRESENTED

The Court in its order granting certiorari (R. 90) limited its review to the first question presented by the petition:

> 1. * * * The first question presented is whether other claimants in the proceeding may implead the Commission, under the alleged authority of Admiralty Rule 56, to respond to them in damages for losses suffered by them in the collision.

The United States suggests that the question before the Court is more accurately stated as follows: whether those who are already parties to an admiralty limitation proceeding may cross-claim against each other for damages arising out of the same maritime accident involved in the proceeding.

STATUTES AND REGULATIONS INVOLVED

The pertinent provisions of the Shipowner's Limitation of Liability Act and this Court's General Admiralty Rules are set forth in the Appendix, *infra*, pp. 64–72, and at pp. 44–50 of the petitioner's brief.

STATEMENT

Petitioner is a claimant in a proceeding brought in the District Court for the Eastern District of Vir-

ginia by the United States as owner of the Naval Transport *Haiti Victory* for exoneration from, or limitation of liability for, loss or damage resulting from a collision between that vessel and the overnight ferry, *Duke of York*, owned by petitioner, in the North Sea (R. 22). During the pendency of the proceedings, other claimants against the *Haiti* filed cross-claims against the *Duke* to recover for death, personal injury, and loss of baggage (R. 12–21). In addition, the United States made a claim against petitioner for damage to its vessel, which it asserted as an "offset" and a "cross-claim" in its answer to petitioner's claim (R. 32–33).

The District Court, in a memorandum opinion, held that the claimants could not cross-claim against another claimant, such as petitioner, and dismissed the cross-claims (R. 58, 72). Subsequently, at the trial of the limitation proceeding, the District Court exonerated the United States from all liability, holding the *Duke* solely to blame for the collision (R. 64). Petitioner and the other claimants then appealed to the Court of Appeals for the Fourth Circuit. Although not itself noting an appeal, the United States filed a formal cross-assignment of error asserting that the District Court had denied "to [the United States] their right to cross claim and implead the owners of the *Duke of York*" (R. 74).

The Court of Appeals sustained the District Court in finding the *Duke* solely at fault, but reversed the District Court's order refusing to hear cross-claims between claimants in a limitation proceeding (R. 77–

88). All claimants sought review by this Court.[1] The Court granted certiorari limited, as stated above, to the first question stated by petitioner, *i. e.*, whether claimants in admiralty limitation proceedings could cross-claim (R. 90).

SUMMARY OF ARGUMENT

I

Proceedings for limitation of the shipowner's liability have never been entirely defensive in nature. From the time of their origin late in the 19th century, they have been characterized by an extremely flexible procedure, providing, where appropriate, the benefits both of a *concursus* of claims against the petitioning shipowner, and a cross-libel in which all claims arising from a single maritime incident are finally determined.

This Court, in adopting rules of practice for the limitation proceeding, made it clear that it did not intend to foreclose the development of alternative procedures by the lower admiralty courts. Nothing in this Court's general admiralty rules forbids utilization of the customary admiralty cross-claims practice in shipowner's limitation proceedings.

With the exception of a single district court ruling (which was in effect subsequently overruled by the court of appeals for the circuit in which the district

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[1] The passenger claimants filed a petition for a writ of certiorari from that part of the Court of Appeals judgment exonerating the *Haiti* from liability. *Arthur Goodman, et al.* v. *United States*, No. 249. This Court denied the petition on October 8, 1956. 352 U. S. 838.

court is located), cross-claims between parties in limitation arising from the subject matter of the proceeding have been allowed in every case where the question has been presented. *Department of Highways of State of Louisiana* v. *Jahncke*, 174 F. 2d 894 (C. A. 5), relied on by petitioner, refused impleader against a non-party on a claim that was separate from the subject of the limitation proceeding; hence, it has no real bearing on the present issue.

Moreover, absence of express authority for cross-claims practice in this Court's General Admiralty Rules does not constitute a bar to this procedure. The General Rules have never been intended to be exhaustive of allowable admiralty procedures, for the lower admiralty courts have always been free to adopt procedures so long as they are not inconsistent with the Rules. Further, the existing admiralty cross-claims practice in libels *in rem* and *in personam* has been built up "by analogy" to one or more of the Rules, although it is not provided for in these Rules.

Thus, the court below was sustained by precedent and authority when it referred to Rule 56 in allowing cross-claims in admiralty limitation proceedings, although it would have had power to adopt such a procedure even apart from the General Rules.

II

The availability of admiralty cross-claims practice in limitation proceedings is supported not only by the history of limitation, but by the dual purpose of the

American limitation proceeding which, unlike its European counterparts, must provide both a concourse of claims and at the same time resolve all rights and liabilities arising from a single maritime accident or event.

Since, under substantive maritime law, the liability of all parties must be determined in the course of passing upon the petitioning shipowner's fault, and the limitation decree will be *res judicata* as to such liability, there is no good reason why claimants and other parties should not be permitted recovery in the limitation proceeding, rather than being forced to resort to functionally useless collection suits, often in foreign forums. Cross-claims are allowed in equity receiverships and summary bankruptcy proceedings where necessary to the disposition of debtors' estates. No convincing argument has been advanced as to why the rule in admiralty should be different, especially when it is recognized that the admiralty has led, rather than followed, in the development of a flexible cross-practice.

III

There is nothing unfair or impractical about the practice of cross-claims in admiralty limitation. A claimant who seeks to press his own claim in a judicial proceeding should be subject to offsetting claims arising from the same transaction, unless there are compelling reasons to the contrary. In fact, there is no prejudice to claimants in being subjected to offsetting claims in limitation. Most limitation claimants against whom there may be claims are foreign and

domestic shipowners who are already subject to suit in an American jurisdiction and who, in the event of claims, will be able to file their own limitation petitions. It is unlikely, therefore, that foreign claimants will be substantially deterred from claiming in American limitation proceedings, or that the concourse will be rendered ineffective.

The distinction between American and European practice raised by petitioner merely highlights the appropriateness of cross-claims in American limitation. The British and continental proceeding is a pure *concursus*, held only after the liability of all parties to a maritime accident has been determined, either by stipulation or in a prior proceeding. The American proceeding, in marked contrast, must determine its parties' liabilities as well as provide for the right to limit. Thus, while cross-claims are necessary in American proceedings, they would serve no useful purpose in the British concourse.

ARGUMENT

INTRODUCTION: THE INTEREST OF THE UNITED STATES

At the outset, we are confronted with petitioner's contention (Br. 4) that no interest of the United States is involved in this proceeding, since "no claim or right of the United States has been passed upon by the courts below." This contention, however, ignores the fact that the United States has an unquestioned claim (actually a counterclaim) against petitioner for damage to its vessel, which it asserted as an "offset" and a "cross-claim" in its answer to

petitioner's claim (R. 32–33).[2] Under petitioner's view of the applicable law (Br. 21), adopted by the District Court but rejected by the Court of Appeals, the United States cannot enforce that claim in this proceeding.

After the District Court's decree, the United States filed a formal cross-assignment of error asserting that the court had denied "to [the United States] the right to cross-claim and implead the owners of the SS. *Duke of York*" (R. 76). Under established admiralty practice, although the United States did not note an appeal, the question raised by its cross-assignment was before the court below. 4 Benedict, *Admiralty* (6th Ed.), §§ 571-572. The question may, therefore, properly be brought before this Court.

Moreover, there can be little doubt that, practically speaking, this Court in reviewing the decision below will in all probability also determine the right of limitation petitioners, including the United States in this case, to cross-claim against claimants; for the rights of all parties in this regard are so closely connected that there would appear to be little justification for allowing the claim in one case and denying it in another. See *infra*, p. 25.

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[2] A cross-claim and setoff can be presented by an answer in admiralty. *Esso Standard Oil Co.*, v. *United States*, 174 F. 2d 182 (C. A. 2).

In addition, following remand of the case by the Court of Appeals, and prior to the petition for certiorari, the United States, relying on the decision below, filed a cross-claim in the District Court seeking an affirmative recovery against petitioner for damages arising from the collision.

Hence, in our view, the true issue before the Court is not merely, as petitioner would have it (Br. 4, 5), the narrow one of whether certain passenger claimants can recover against it below, but the more general issue of whether admiralty cross-claims practice is available as between co-parties in an admiralty limitation proceeding with respect to claims arising out of the subject matter of the proceeding. On the other hand, there is no problem on this record of impleading[3] third parties—strangers to the proceeding—for the purpose of asserting cross-claims against them; all the cross-claims involved here, whether asserted by the United States or by the passenger claimants, are cross-claims between those who are already parties. Nor is there any problem on this record concerning unrelated cross-claims; all the cross-claims involved here stem from precisely the same marine accident which is the basis of petitioner's claim against the United States. To repeat, the true question here is whether admiralty cross-claims practice is available as between co-parties in an admiralty limitation proceeding with respect to claims arising out of the subject matter of the proceeding; all else is unnecessary to a decision in the case, but at the same time the issue is no narrower than we have stated it. To that question, we now turn.

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[3] The term "impleader," sometimes used loosely to refer to all forms of cross-action, is here reserved for claims asserted against persons not party to the limitation proceedings, to avoid confusing the two types of claim. The general term "cross-claim" is used in this brief to refer to claims against claimants already party to a limitation proceeding, whether asserted by a limitation petitioner or by other claimants.

I

A PROCEEDING FOR LIMITATION OF A SHIPOWNER'S LIABILITY IS SUFFICIENTLY FLEXIBLE TO ALLOW DISPOSITION OF ALL CLAIMS BETWEEN CO-PARTIES ARISING FROM THE SUBJECT MATTER OF THE PROCEEDING

The main thrust of petitioner's argument (Br. 9–22, 31–36) is that the decision below amounts to a departure from well-established admiralty practices and principles, a departure which is unwise and should be firmly repressed by this Court. Petitioner argues that cross-claims[4] have never been allowed in limitation proceedings under Admiralty Rule 56, since those proceedings, in their origin and development, have been entirely defensive in nature, permitting claims and recovery only against the limiting shipowner.

The question of an appropriate cross-claims procedure for admiralty limitation proceedings is one of first impression here, which, we submit, this Court should and will decide primarily on the basis of current needs and conditions. But petitioner's description of the origin and history of admiralty limitation should not go unanswered, since the history of limitation throws much light on its essential character and purpose. Nothing could be less correct than that an admiralty limitation is a specialized proceeding in which the traditionally flexible procedure of the admiralty cross-libel is unavailable.[5] Since

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[4] See note 3, *supra*.

[5] On the traditionally flexible and convenient procedure of admiralty, and in particular its broad use of the cross-libel, see *infra*, pp. 44–46.

an early date, admiralty has permitted cross-claims, in appropriate cases, between parties already before the court in limitation proceedings, and the notion that the proceeding is entirely defensive in character is of recent origin.

In the next several pages, we shall attempt briefly to place the modern admiralty limitation proceeding in its historical context. We hope thereby to show that nothing in the history of limitation precludes, and much supports, adoption or reaffirmation by this Court of a flexible cross-claims limitation procedure. We will then argue that such a procedure is not only historically well founded but also practical and equitable in the light of today's practice (*infra*, pp. 40–63).

A. ADMIRALTY LIMITATION HAS ITS ORIGIN BOTH IN STATUTE AND RULE, NEITHER OF WHICH PRECLUDED CROSS-CLAIMS

Although limitation of the shipowner's liability came relatively late to American law and was never a part of the mecantile law of England, far from constituting a "legislative graft upon the principles of admiralty", as petitioner asserts (Br. 9), its roots are deep in the general maritime law of medieval Europe. *The Main* v. *Williams*, 152 U. S. 122; Holmes, *The Common Law*, pp. 6, 30. The present American statute (R. S. 4283–4285, *infra*, pp. 64–67) stems from an Act of Congress of March 3, 1851 (9 Stat. 635), which, in turn, was based on earlier English statutes which had adopted the general maritime rule. *Norwich Co.* v. *Wright*, 13 Wall. 104, 117–119. The purpose of the Act, as early described by this Court (13 Wall. at 121), was "to encourage ship-

building and to induce capitalists to invest money in this branch of industry," inasmuch as such investors incur a "very large risk in exposing their property to the hazards of the sea, and to the management of seafaring men, without making them liable for additional losses and damage to an indefinite amount."

The provisions of the original 1851 Act, which have a direct relevance to this proceeding, can be briefly summarized. Section 3 (9 Stat. 635) provided that the liability of shipowners for damage arising from the operation of a vessel "without the privity or knowledge of such owner or owners" should be limited to "the interest of such owner or owners respectively, in such ship or vessel, and her freight then pending". Section 4 of the Act authorized apportionment of the owner's interest among the various claimants if the total claims exceeded the interest, and authorized the owner or claimants to bring "appropriate proceedings" for that purpose; and Section 4 further provided that an owner, if entitled to limit, could be quit of further liability by transferring his interest in the vessel and her pending freight to a trustee appointed by the court for benefit of the claimants. The Act was sketchily drawn and, for twenty years following its enactment, little noticed in the reports.

In 1866, the steamship *City of Norwich* collided with a schooner in Long Island Sound. The schooner was lost, and its owners libeled the *Norwich's* owners *in personam* in the District of Connecticut and obtained a decree that the steamer was at fault. Before that decree, cargo claimants had libeled the *Norwich*

in rem in the Eastern District of New York. The *Norwich's* owners, relying on the 1851 Act, petitioned for a concourse of claims in the Connecticut proceeding, asserting that their interest in the ship and her freight was less than the combined claims for the loss of the schooner and the cargo claims, and asking for apportionment of that interest among the respective claimants. The District Court denied the petition for want of jurisdiction, and the Circuit Court affirmed on a different ground. On writ of error Mr. Justice Bradley, after first reviewing the background of the limitation statute, concluded for the Court that the *Norwich's* owners were entitled to limit their liability to their interest in the vessel and its freight. *Norwich Co.* v. *Wright,* 13 Wall. 104. The Court pointed out, however, that the limitation petition should have been filed in the New York proceeding which had jurisdiction over the *Norwich,* not in the Connecticut suit *in personam,* but added that "want of any uniform practice on the subject may, perhaps, be a sufficient excuse for not having done this" (13 Wall. at 126).

The opinion then outlined the proper procedure for invoking limitation, later to be elaborated in four new general admiralty rules (Rules 54–57) promulgated in the same term (13 Wall. XII–XIV). Rule 54 (now Rule 51) provided for a petition in the "proper District Court" alleging facts and circumstances entitling the owner to limitation, and for an appraisement or stipulation as to the owner's interest in the vessel and her freight, and for payment of the amount of that "interest" into court; alternatively, the rule pro-

vided for a transfer of the owner's interest to a trustee appointed by the court. On compliance with this procedure, the owner was entitled to a monition to all claimants to appear and present their claims in the concourse, and for an injunction against the prosecution of such claims elsewhere than in the limitation proceeding (13 Wall. at XII–XIII). Rule 55 (now Rule 52) provided for proof of claims before a commissioner and distribution of the proceeds of the vessel and freight *pro rata* among the claimants (13 Wall. at XIII). Rule 56 (now Rule 53) made it clear that (unlike the British rule) the shipowner could seek complete exoneration in the limitation proceeding, and provided that claimants could challenge the petitioner's right to exoneration or limitation by answer to the petition (13 Wall. at XIII). Finally, Rule 57 (now Rule 54) provided that venue for a limitation petition lay (1) in a district where the vessel had been libeled or (2), if the vessel had not been libeled, then in the district in which the owner had been sued.*

It is clear, therefore, that the present-day limitation proceeding stems from two sources: The 1851 Act, which provided the substantive right of limitation but only a bare suggestion as to procedures; and this Court's rules, which provided certain procedures to be followed in obtaining limitation, and also resolved uncertainties in the Act itself in filling out the statutory "skeleton" provided by Congress. See *Black Diamond S. S. Corp.* v. *Stewart & Sons, Ltd.*, 336

* For the subsequent history of the venue provisions of Rule 54, see *infra*, pp. 57–58.

U. S. 385, 399–401. Neither source contained any suggestion that admiralty limitation was intended to preclude ordinary admiralty cross-claims procedures.

B. THE ALLOWANCE OF CROSS-CLAIMS BETWEEN CO-PARTIES HAS BEEN A CHARACTERISTIC FEATURE OF THE LIMITATION CONCOURSE SINCE ITS INCEPTION

The rules issued by this Court in 1872 marked the beginning of widespread use of admiralty limitation by shipowners. While they made no express provision for cross-claims by the limitation petitioner or other claimants arising from the maritime incident underlying the petition, the rules were not intended as exhaustive and the admiralty courts remained free, as in other forms of admiralty practice, to work out their own procedures within the framework of the law and the rules.

1. Following adoption of Rules 51–54 in 1872, this Court in a number of cases held that limitation could be had despite a shipowner's failure to follow the procedure established by the rules, since they were not intended to foreclose the use of other lawful procedures in the district courts. *The Scotland,* 105 U. S. 24; *Ex parte Slayton,* 105 U. S. 451. Cf. *Providence & New York Steamship Co.* v. *Hill Manufacturing Co.,* 109 U. S. 578. In *Ex parte Slayton, supra,* decided in 1881, the Court (per Waite, C. J.) held that a shipowner could file a limitation petition prior to any claim being filed against him, despite the express provisions to the contrary in Rules 54 and 57. The Court stated (p. 452):

> As was said at this term in *The Scotland* [105 U. S. 24], our rules were not intended to pre-

> vent an owner from availing himself of any other remedy or process which the law itself entitled him to adopt, but to aid him in bringing into concourse those having claims against him arising from the acts of the master or crew.

Thus, the absence of any provision in Rules 51–54 authorizing claims between parties to a limitation proceeding did not necessarily mean that such claims could not be heard by a district court following adoption of the rules, once the court had assumed jurisdiction over the *res*—the vessel or fund to be distributed. See also *infra*, pp. 36–40.

This conclusion is buttressed by two decisions of this Court in 1882 and 1887 recognizing that opposing parties in a cross-libel arising out of a marine collision could obtain the benefit of limitation *in the same proceeding* and that recovery could be had by the less damaged party up to the limit of his respondent's liability. Thus, *The North Star*, 106 U. S. 17, involved a libel *in rem* and cross-libel *in personam* arising from a collision. Both ships were found at fault, and a decree entered in favor of the libelant for the difference between his damages and half the aggregate damages of both parties. The libelant argued, for the first time in this Court, that he was entitled to limitation, and that he should be allowed to collect half his damages without offset for the damages of the cross-libelant, since his ship was totally lost. In holding that the parties were entitled to limitation after, but not before, offsetting damages where both were found at fault, this Court (through Mr. Justice Bradley) recognized that both parties could have

obtained the benefit of limitation *in the same proceeding* if both were entitled to it, and either party could recover against the other in the same proceeding without the necessity of a separate suit.[7]

Similarly in *The Manitoba,* 122 U. S. 97, both libelant and cross-libelant claimed and received the benefit of liability limitation, under the 1851 Act, in a collision libel in which both were found at fault; and the owner of the less damaged vessel was allowed recovery, limited to the value of the opposing owners' "interest" in their vessel and its pending freight. See also *The Scotland,* 105 U. S. 24, 33–36.

2. The early admiralty limitation procedure provided for cross-claims between parties not only in cross-libels but also in proceedings initiated by a shipowner. This is shown by a number of cases in the lower federal courts, particularly the District Court for the Southern District of New York and the Court of Appeals for the Second Circuit. Decisions of those courts uniformly followed a flexible procedure permitting the complete resolution of all claims arising from a single maritime collision.

At a very early date, in 1873, immediately following this Court's decision in *Norwich* v. *Wright, supra,* Judge Benedict was confronted with the question

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[7] The cross-libelant was denied limitation because its fault lay in the original construction of the vessel, to which it was, of course, privy. 106 U. S. at 29. *The North Star* was not a proceeding initiated by an independent petition for limitation. It illustrates, however, the lack of historical basis for the notion that limitation is necessarily "sui generis" or "defensive" in character, or that one can never obtain the benefit of limitation and recover against a claimant in the same proceeding.

whether non-maritime claims could be heard in limitation proceedings, and whether in view of the procedural gaps in what is now R. S. 4284, an owner could limit his liability for injury and loss of life. *The Epsilon*, 6 Ben. 378, 8 Fed. Cas. 744, No. 4,506. In holding that all claims "arising out of the same disaster" were cognizable in limitation proceedings, Judge Benedict stated (*id.* at 381, 8 Fed. Cas. at 745):

> In a cause of this character the adjudication of any one demand involves an adjudication of all other demands made and arising out of the same disaster; and from the necessity of the case, therefore, the whole mass of demands may be brought within the cognizance of the Admiralty by the institution there of a cause of limitation of liability promoted by the ship's owner. * * *

Rejecting the contention that the court was powerless to grant limitation for certain claims because no procedure was provided by the Act, the court said further (*id.* at 389, 8 Fed. Cas. at 748):

> For the Admiralty creates its own forms of proceeding, and adapts methods of its own to the varied necessities which present themselves to its consideration. The power to do this is part, and the important part, of the jurisdiction of the Admiralty. "The principles, rules and usages which belong to Courts of Admiralty" (Process Act 1792) enable these Courts to work justice between man and man with celerity and economy. They accomplish this by ways unknown to other Courts, and for many of which it were vain to look in any statute.

> Stripped of the power to pursue these methods, there would be little left to distinguish a Court of Admiralty from a Court of equity or of law.
> * * *

Again in 1892, Judge Addison Brown in *The H. F. Dimock,* 52 Fed. 598, 599 (S. D. N. Y.), outlined the various methods by which a shipowner might then obtain limitation of his liability in a marine accident: (1) by answer, when sued; (2) by a petition offering to transfer the ship to a trustee; (3) by a similar petition under Rule 51 offering a stipulation to pay the ship's value into court; or (4) as a result of a creditor's (claimant's) suit for an apportionment and *pro rata* distribution. The third edition of Benedict's *Treatise on the Admiralty,*[8] issued two years later in 1894, contained for the first time a detailed treatment of the limitation proceeding, in the preparation of which the author acknowledged the "valuable suggestions" of Judge Addison Brown. Stating (*id.* at 315) that the limitation proceeding "should be considered as being both *in rem* and *in personam,* having therefore the advantages and the forms of both classes of proceeding," the treatise continued (*id.* at 316):

> Section 4285, which provides that the transfer by the owner of his interest in the vessel and freight to a trustee shall be "a sufficient compliance with the requirements" of the statute, points out one "appropriate" proceeding. But this is not the only one. For the rules of

[8] The various editions of this treatise are cited hereafter as Benedict (— ed.) p. —.

the Supreme Court provide for other proceedings. And it may be questioned whether these rules are exclusive; for, as the Supreme Court has itself said, the rules "were intended to *facilitate* the proceedings of the owners of vessels." If at any time it should appear that some proceeding not therein provided for was in any case more appropriate for securing the result, it can hardly be doubted that such a proceeding would be sustained, and as to all details of proceeding not specifically provided for in the rules this matter of their appropriateness for the purpose furnishes a criterion.

3. To our knowledge, the first reported decision applying these often reiterated principles to allow cross-claims in a limitation proceeding initiated by the shipowner is *The City of Boston,* 182 Fed. 171 (D. Mass.), decided in 1909. In that case, following a scow and ferry boat collision, both owners brought separate petitions for limitation of liability. The scow was found solely at fault in the ferry boat's proceeding (159 Fed. 257). Prior to an appeal from this finding, passenger claimants filed claims in the ferry boat's limitation proceeding (but not in the scow's), and the ferry boat's owner then appeared as a claimant in the scow's proceedings, seeking, *inter alia,* contribution for the passenger claims should both be found at fault (the scow's owner did not, however, claim in the ferry boat's proceeding). Both vessels were found at fault on appeal (162 Fed. 860), and, after the remand, the ferry boat owner sought consolidation of the two proceedings, or to implead the scow's

owner in its own proceeding to answer for one half its liability to the passengers. Judge Dodge denied the motion for consolidation, but granted impleader and allowed the cross-claim (182 Fed. 171, 173). While recognizing that the situation was not expressly covered by rule, the District Court held that "following the analogy of admiralty rule 59 [Rule 56], the [ferry boat owner] should be allowed, under the circumstances above referred to, to summon the [scow owner] to appear, answer, and defend against the claims of [the passengers] and to make them [the scow owner] parties to these proceedings for that purpose." (182 Fed. at 173.) The owner of the ferry boat, or the passengers, were allowed to recover by a cross-claim in the limitation proceeding "the same claim for contribution which it might recover in an independent suit" despite the absence of any "reported precedent for the allowance of such a claim in limited liability proceedings." *In re Eastern Dredging Co.*, 182 Fed. 179, 183 (D. Mass.). The decision is based on the principle that limitation claimants and petitioners can claim *inter se* in a single proceeding where necessary to a complete adjudication of the rights and liabilities of all parties to the proceeding, although it also allows impleader of a stranger to the proceeding—an issue not directly involved here (see *infra*, pp. 30–33).

The *City of Boston* was followed in due course by *The Adah*, 258 Fed. 377, decided by the Second Circuit in 1919 and relied on by the court below. Jacobus had contracted with Beer for the use of a chartered scow, the *Adah*, to lighter cargo owned by Beer on

the steamship *Uller*. Beer obtained a stevedore, Brady, to do the unloading. During the course of the work, the scow capsized, dumping the cargo and injuring herself and the *Uller*. When Fox, the scow's owner, was impleaded in a libel filed by the *Uller's* owners against Brady, the stevedore, he petitioned for limitation. All of the above persons filed as claimants in the concourse. The District Court absolved the scow and its principals; found the stevedore negligent, and Beer, the stevedore's employer and a claimant in the proceeding, liable for loss of the cargo and damage to the *Uller;* but did not make any decree as to the *Adah's* damage or award a money recovery. On appeal, Brady assigned as error the affirmative holding that he was negligent in the *Adah's* limitation proceeding, contending that the court had no jurisdiction in such a proceeding to do no more than absolve the *Adah* of blame. In rejecting this contention, Judge Hough stated (258 Fed. at 381):

> Whether it was necessary, in absolving the *Adah,* to fix blame on someone else, is a question we need not decide. Nor are we concerned with the inquiry whether the court could have compelled some of the parties to this appeal to come into the limitation proceedings. It is enough that they did come in, and made parties of themselves. Some of them (perhaps) came in voluntarily, but (as hereinbefore shown) all deliberately raised issues with each other, as well as with the petitioner, Fox, and litigated those issues at great length.
>
> Having become parties, they are bound by the decree entered in the suit wherein they are parties.

"Parties in the larger legal sense are all persons having a right to control the proceeding, to make defense, to adduce and cross-examine witnesses, and to appeal from the decision if an appeal lies."

All the persons, firms, and corporations before this court in this matter fully respond to this definition. How or why they became parties is immaterial; they have had their day in court, and their relative rights have in substance been properly adjudicated.

The decree appealed from is affirmed. * * *

Judge Hough's language strongly suggests, if it does not actually hold, that the District Court had jurisdiction not only to enter a decree finally determining the liability *inter se* of all parties to the proceeding, but also to award damages,

In the course of the extended litigation arising from a collision of the *S. S. Steel Inventor* with the destroyer *USS Woolsey* in 1921, the Second Circuit was again presented with, and this time squarely decided, the propriety of cross-claims in limitation. The *Inventor's* owners had instituted a proceeding for limitation in which the United States claimed and answered. The petitioner then filed a cross libel against the United States in the same proceeding for damage to its vessel, which was dismissed for want of jurisdiction. *Steel Inventor,* 1925 AMC 226 (S. D. N. Y.). Both vessels were found at fault, and as the United States' losses were much greater, it stood to receive a substantial payment from the limitation petitioner. Before the award, however, cargo damage claimants attempted to intervene and cross-claim

against the United States. The District Court dismissed the intervention petitions as an unconsented suit against the United States. When the cargo claimants appealed from this order, the Second Circuit reversed. It held that the United States' claim in limitation amounted to "a right of suit in admiralty against the Steel Inventor", subjecting the United States to cross-suit under principles enunciated in *The Thekla,* 266 U. S. 328. The award to the United States was regarded as a substitute for the lost *Woolsey* and a part of the *res* before the court which was subject to the lien of the cargo claimants. The court accordingly held that the claimants were entitled to recover against the United States, a co-claimant in the *Inventor's* limitation proceeding. *In re United States Steel Products Co.,* 24 F. 2d 657. On a second appeal from the final decree, the Second Circuit found that the *Woolsey* was solely at fault. It also overruled the District Court's order dismissing the *Inventor's* cross-libel[9] and allowed the *Inventor* (the limitation petitioner) to recover against the United States which was a claimant in its limitation proceeding, citing the *Steel Products* decision as authority. *The Steel Inventor,* 43 F. 2d 958, certiorari denied, 283 U. S. 819. These decisions stand squarely for the principle that both a limitation petitioner and a limitation claimant can file cross-claims in the limitation proceedings.

[9] Petitioner's brief does not point out that the District Court's ruling disallowing a limitation petitioner's cross-claim in *Steel Inventor,* 1925 AMC 226, was reversed by the Second Circuit. See *infra,* pp. 26–27.

See, for the same holding, *The Clio-The Springhill*, 1948 AMC 75 (S. D. N. Y.).

The Second Circuit has recently reaffirmed its holdings in the *Adah* and *Steel Inventor* by allowing a shipowner to cross-claim against claimants in its own limitation proceeding for indemnity for amounts it might be forced to pay to other claimants in the proceeding. *Moore-McCormack Lines, Inc.* v. *McMahon*, 235 F. 2d 142 (C. A. 2). The court cited its prior decisions as "direct authority" for the practice, and also cited, as "persuasive," the decision of the court below. It also stated that "in any event, approach to modern admiralty as to modern civil procedure should be to permit convenient practice where we know of no authority that forbids" (235 F. 2d at 143).[10]

The *Steel Inventor* proceedings display, in microcosm, the flexible and efficient cross-claim procedure developed by the Second Circuit and the district courts of that circuit in admiralty limitation. In such

[10] Petitioner suggests obliquely (Br. 36) that *McMahon* may be distinguishable since there are equitable considerations favoring counterclaims by the limitation petitioner which are not present in the case of a claimant's cross-claim, citing *The Thekla*, 266 U. S. 328. The distinction, we believe, is insubstantial. A claimant enters a limitation proceeding seeking recovery in competition with other claimants. To the extent that he does recover, other claimants' shares are reduced *pro rata*. Petitioner would allow him recovery without being subject to claims by other claimants arising from the same occurrence—claims which would otherwise reduce his share. However, claimants should no more be permitted to recover in limitation proceedings without being subject to offset by other claimants, than they should be allowed recovery without offset by the petitioner. If the *Thekla* rationale is applicable to one, it is applicable to both types of claim.

proceedings, the rights and liabilities of the various claimants are tried and settled in a single forum. Where appropriate, individual claimants are allowed to recover against other claimants for damage caused in the underlying incident. If the petitioner is entitled to offset or to affirmative recovery against a claimant, he can have it without the necessity of a separate suit in which the findings in the limitation proceeding would in any event be *res judicata*. The wisdom or practicality of this procedure will be considered in detail *infra*, pp. 40–63.

3. Despite these decisions, petitioner argues (Br. 31–35), relying primarily on scattered *dicta* in the Second Circuit and the Southern District of New York, that cross-claims have never been allowed in limitation. However, with the exception of a single district court ruling (*New Jersey Barging Corp.* v. *T. A. D. Jones & Co.*, 135 F. Supp. 97 (S. D. N. Y.))[11]—a ruling which in effect was subsequently overruled in the Second Circuit's *Moore-McCormack* decision (*supra*, p. 25)—none of petitioner's cases is authority for the proposition for which they are cited. We have already seen (*supra*, p. 24) that Judge Hough's order dismissing a cross-libel in *Steel Inventor*, 1925 AMC 226, which petitioner particularly emphasizes (Br. 35–36), was reversed by the Second Circuit in its review of the final decree in that proceeding (43 F. 2d 958).[12]

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[11] See note 14, *infra*.

[12] Judge Hough's order there should be compared with his views, speaking for a unanimous court, six years earlier in *The Adah*,

Petition of Texas Co., 81 F. Supp. 758 (S. D. N. Y.), also relied on by petitioner (Br. 33), actually supports our position. That case involved a collision between a fishing vessel and a tug owned by the Texas Company which brought a limitation proceeding in which the fisherman claimed but did not answer. Texas moved to "implead" the fisherman under Rule 56 to indemnify it against any recovery by passenger claimants. The District Court, by Judge Leibell, ordered the fisherman to answer the petition, since his claim put in issue the fault of both vessels; and held that, in the event both were found at fault, Texas would be entitled to set off one-half of its liability to the passengers against the fisherman's claim. This result is directly contrary to petitioner's assertion that no offsetting claim can be filed by a limitation petitioner.

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258 Fed. 377 (see *supra*, pp. 21–23). In *Steel Inventor*, Judge Hough cites no authority to support his view that cross-claims could not be had in limitation proceedings. His opinion does reflect a reluctance to allow cross-claims in the absence of a square appellate holding validating such a procedure, a holding which was to be supplied later in that very proceeding (*supra*, p. 24). We submit that Judge Hough's reasoning is unpersuasive, for in denying the cross-claim he relies (1) on the formal distinction between cross-libels and limitation proceedings, and (2) on the fact that, while cross-libelants must give security as respondents to the original libel, the stipulation or bond of a limitation petitioner is not security in this sense. The first point begs the question. As to the second, the stipulation will be adequate if limitation is allowed since it then constitutes the petitioner's maximum liability; and if limitation is denied, the security given by the petitioner can always be increased as a condition to allowing its cross-claim. See *infra*, p. 63.

Although the District Court in *Petition of Texas Co.* did not reach the question whether the petitioner could have obtained an *affirmative* recovery against the fisherman (see 81 F. Supp. 762), it nevertheless added in *dictum* that it would "seem" no recovery could be allowed, on the authority of *Algoma Central & Hudson Bay Ry. Co.* v. *Great Lakes Transit Corp.*, 86 F. 2d 708 (C. A. 2). That case, however, contains no such holding.

In *Algoma*, following a marine collision, one owner petitioned for limitation in the Western District of New York and the other, a railroad, brought a libel *in personam* in the Northern District of Ohio and also sought to file a limitation petition in the Western District of New York. The Court of Appeals, through Judge Learned Hand, held that venue was improperly laid in the latter district under this Court's then Rule 54, since (1) the railroad's vessel had been totally lost and hence neither it nor its proceeds were within the district, and (2) the railroad had not been sued in that district. See *supra*, p. 14.

The court also pointed out that the proceeding was an ordinary concourse in which no counterclaim had been filed, stating (86 F. 2d at 710):

> * * * Suppose the petitioner were to interpose a counterclaim to a claimant's claim; that that counterclaim were for a greater amount; and that the petitioner wished to use it, not only as a set-off, but as the basis for an affirmative recovery against the claimant. If this were permissible in the limitation suit, it would pro

> tanto become an offensive suit. We can assume arguendo, that it would be permissible, because the Great Lakes Company has not filed such a counterclaim. * * *

The court concluded that in the proceeding before it (*i. e.*, in the absence of a counterclaim) the original petitioner could not have recovered anything affirmatively. Hence, no "suit" had been filed against the claimant, despite the fact that the decree would be *res judicata* as to both the petitioner's and the claimants' fault (86 F. 2d at 710).[13] No other reading of the somewhat ambiguous decision appears tenable if Judge Hand's language is viewed in the context of the whole opinion as well as the result reached. This was Judge Knox's view of the opinion in *The Clio-The Springhill,* 1948 AMC 75, 77 (S. D. N. Y.). Further, Judge Hand had participated in the *Steel Products* and *Steel Inventor* decisions (*supra,* p. 24), and it is unlikely that he would have discredited those holdings *sub silentio. Algoma,* therefore, has no bearing on the question of whether cross-claims should be allowed.[14]

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[13] Under the present Rule 54, venue could have been laid in the Western District. See *infra*, p. 58.

[14] Circuit Judge Lumbard, sitting in the Southern District, had held prior to the Second Circuit's recent *Moore-McCormack* decision (*supra*, p. 25) that a limitation petitioner could not cross-claim against a claimant, who had not answered the petition, for indemnity against other claims, since a limitation proceeding was not a "suit," but a "special statutory proceeding" and a "defensive" action. *New Jersey Barging Corp.* v. *T. A. D. Jones & Co.*, 135 F. Supp. 97. The court relied on *Petition of Texas* and *Algoma*, *supra*, and the Fifth Circuit's decision in *Department of Highways of State of Louisiana* v. *Jahncke Service Corp.*, 174

C. THE DECISION OF THE FIFTH CIRCUIT IN *DEPARTMENT OF HIGHWAYS OF LOUISIANA* V. *JAHNCKE*, WHICH DEALS WITH THE QUESTION OF IMPLEADING A THIRD PARTY ON A DISTINCTLY SEPARATE CLAIM, HAS LITTLE OR NO BEARING ON THE PRESENT ISSUE

Petitioner argues that the Fifth Circuit's decision in *Department of Highways of State of Louisiana* v. *Jahncke Service Corp.*, 174 F. 2d 894, supports its position that related cross-claims are not allowable in admiralty limitation. But the facts in that case, clearly set forth in the record and the briefs of the parties made available to the court below, demonstrate that it has no real bearing on the present question.

In *Jahncke*, a number of barges, including one owned by the appellee Jahncke, tore loose in a wind storm and struck and injured the appellant Highway Department's bridge. When Jahncke petitioned for limitation in the Eastern District of Louisiana, the Department filed a claim and answer, and then filed a so-called "third party" petition seeking to implead the Town of Madisonville, the owner of several of the other barges which had struck its bridge. Since the barges (Jahncke's barge, on the one hand, and the

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F. 2d 894. We have shown that neither *Texas* nor *Algoma* support this proposition, and the *Jahncke* decision (discussed *infra*, pp. 30–33) relates to a different question, the right of a limitation petitioner to a true impleader, the bringing in of an outsider to the limitation proceeding to answer to a separate claim.

Poling Bros. No. 5-Tom Wogan, 1937 AMC 1513, also relied on by petitioner, held only that a collision limitation petitioner could not implead a third party to answer over when both vessels were found at fault, where the impleading claim did not arise from the subject matter of the proceeding and would have required resolution of entirely unrelated issues. The holding, if anything, supports our view, for it suggests by negative inference that impleader could be had on a claim arising from the subject matter of the proceeding.

Town's, on the other) were independently moored and owned, there was no connection between the accident involving Jahncke's barge and the accident involving the Town's barges, other than the coincidence in time, and hence no legal relation between the petitioner Jahncke and the Town.[15] The Highway Department thus was attempting to implead and recover against one *not a party on a claim which was distinctly separate* from the claims involved in the limitation proceeding.

In holding that impleader could not be had in these circumstances, the Fifth Circuit relied primarily on the "origin, nature and purpose of a limitation of liability proceeding" and the character of third-party practice under Rule 56, as those subjects are rather cursorily dealt with in the Sixth Edition of Benedict (174 F. 2d at 895, fns. 1, 2). See *infra,* pp. 36–40. It concluded that the *City of Boston,* 182 Fed. 171 (D. Mass.), *supra,* was distinguishable on its facts, presumably because there the claim on which impleader was sought arose out of the subject matter of the limitation proceeding. It is at least debatable whether a claimant in limitation should be allowed to implead a third party to answer *for a separate claim,* and it may well be that *Jahncke* was correctly decided on its facts which raised that precise problem.

If, however, the Fifth Circuit's rather generalized opinion can be read to prohibit impleader on claims arising from the very subject matter of the limitation

[15] For example, even if the Town had been impleaded, the court's findings as to the Jahncke-Department dispute would not, and could not, be binding as to the Department-Town dispute.

proceeding, we submit that it should be restricted to its actual facts, since there is no reason why a third party, properly served, should not be brought into a limitation proceeding to answer to claims arising in that proceeding. The impleaded party must necessarily be subject to suit in the district in which the limitation proceeding is being heard, and it is difficult to see how he would be prejudiced by being brought into such a proceeding, any more than in the case of an ordinary libel.

In any event, the *Jahncke* decision—whether rightly or wrongly decided—far from conflicting with the decision below, has no real relevance here. For, as we shall show *infra*, pp. 44–52, it does not follow, merely because third parties cannot be brought into a limitation proceeding, that claimants *already in that proceeding* may not obtain full disposition of their mutual claims and liabilities. A party seeking to recover in a limitation proceeding is obviously in a very different position from a stranger to the proceeding, who has been served with an impleading petition. The equitable and practical considerations dictating that a party seeking recovery should be subject to offsetting claims are absent in the case of a stranger to the proceeding. Although we believe that a third party should in fact be subject to impleader on a claim arising out of the limitation proceeding,[16] the answer to

[16] The Fifth Circuit, as we have pointed out, did not decide this question, but decided rather that no impleader could be had on a distinctly separate claim. Its failure to cite or consider the related Second Circuit precedents on cross-claims is understand-

that question is clearly not decisive on the quite different question of whether cross-claims are permissible between persons already parties.

D. NO CHANGE WAS MADE IN THE ESSENTIAL CHARACTER OF THE LIMITATION PROCEEDING BY THE 1936 AMENDMENTS TO THE LIMITATION OF LIABILITY ACT OR BY THE 1948 AMENDMENTS TO THIS COURT'S ADMIRALTY RULES

We have shown that the admiralty limitation proceeding has never been entirely a defensive action, but rather (like the receivership and bankruptcy proceedings discussed *infra*, pp. 46–52) has frequently provided both a concourse in which all claims against a particular party or fund could be marshalled and, when necessary, a forum for the final disposition of all claims arising from the maritime occurrence which is the subject matter of the proceeding. In furtherance of both these ends, courts of admiralty have generally preserved the traditional flexibility of admiralty procedure in limitation proceedings by allowing cross-libels by the petitioner and cross-claims between claimants where necessary to finally determine the rights of all parties. This has been, and remains, the rule in the Second Circuit, the admiralty court which with this Court has played a decisive, if not an exclusive, role in the development of limitation procedures during the last 50 years.

We have also seen that the original statute and rules did not preclude cross-claims. Neither the 1936 amendments to the Limitation Act nor this

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able in view of the facts before it. Moreover, those cases are not referred to in the sections of the Sixth Edition of Benedict on which the Fifth Circuit apparently relied.

Court's amendments to Rules 51–54 in 1948 changed in any way the basic character of the limitation proceeding, and more particularly the right to cross-claim in that proceeding.

1. The 1936 amendments (49 Stat. 1479) to the Limitation of Liability Act (R. S. 4283–4285, 46 U. S. C. 183–185) made only two significant changes in the Act's provisions.[17] R. S. 4283, providing the substantive right to limitation of liability, was amended by the addition of five subsections, the general effect of which is to increase the shipowner's liability for death or personal injury to a minimum of $60.00 per vessel ton. The original R. S. 4283 was retained as subsection (a). R. S. 4285, providing for a transfer of the owner's interest to a trustee, was amended to incorporate the substance of this Court's Rule 51, outlining certain procedures to be employed in petitioning for limitation. See H. Rep. 2517, 74th Cong., 2d Sess. on H. R. 9969, p. 6; Sen. Rep. 2061, 74th Cong., 2d Sess.; *The Chickie,* 141 F. 2d 80 (C A. 3); *Petition of Southern Steamship Co.,* 132 F. Supp. 316 (D. Del.). The amendment to R. S. 4285 also incorporated a six-month limitation on the right of the owner to file a limitation petition. R. S. 4284, authorizing apportionment of owner's interest, was unchanged. Thus, the only change in existing procedures made by the 1936 amendments was the six-month limit on the shipowner's right to bring an independent limitation

[17] The language of relevant portions of the Act prior to, and after, the 1936 amendments is set forth in parallel columns in the Appendix, *infra*, pp. 64–68.

proceeding.[18] It follows that, if cross-claims were permissible prior to the amendment, they were certainly so after it. See 3 Benedict (6th ed.) p. 347. These amendments, therefore, have no bearing on the right to cross-claim in admiralty limitation.

2. The 1948 amendments to this Court's Rules 51–54 (334 U. S. 864–869) were apparently the result of dissatisfaction with the notice and venue procedures of the prior rules. It has been stated that the amended rules were based in part on similar changes made in the rules of the District Court for the Southern District of New York. See *Petition of Canada SS. Lines, Ltd.*, 93 F. Supp. 549 (N. D. Ohio), *affirmed*, 185 F. 2d 1019 (C. A. 6).

The revisions in Rule 51 were largely matters of detail, clarifying or expanding existing procedures. Rule 54 was also amended to broaden venue in limitations proceedings brought by the shipowner. See *infra*, pp. 57–58. As is readily apparent from the text of the new rules, however, none of these changes altered in any way the basic character of the limitation proceeding, or has any bearing on the availability of cross-claims.[19]

[18] The six-month limit probably applies only to the affirmative petition by the shipowner, not to the owner's right to raise the limitation in an answer or other defensive pleadings, pursuant to R. S. 4284. *The Chickie*, 141 F. 2d 80 (C. A. 3). See *infra*, pp. 55–56. Presumably the doctrine of laches would still restrict reliance on the Act in defensive pleadings. See, *e. g.*, *United States Gypsum Co.* v. *Conners Marine Co.*, 33 F. Supp. 59 (S. D. N. Y.); *General Seafoods Corp.* v. *J. S. Packard Dredging Co.*, 40 F. Supp. 1015 (D. Mass.).

[19] A parallel text of pertinent parts of Rules 51 and 54 before and after amendment is set forth in the Appendix, *infra*, pp. 68–72. Rules 52 and 53 were not changed significantly.

In summary, we have shown, up to this point, that admiralty limitation has been a highly flexible procedure, offering all parties the benefits not only of a concourse of claims but also, where appropriate, the advantage of the cross-libel in which all claims arising from a single event can be adjudicated. The principle that cross-claims can be filed in limitation has been recognized in the Second Circuit for over 45 years, although, until recently, the practice had not been firmly established.

E. RULE 56 OF THE ADMIRALTY RULES IS BROAD ENOUGH TO PERMIT THE FILING OF CROSS-CLAIMS IN LIMITATION PROCEEDINGS

Petitioner argues (Br. 14–22) that, even if it would be desirable or otherwise appropriate to allow cross-claims in limitation, Rule 56 (governing general admiralty impleader) does not expressly allow them, and that rule is controlling in this proceeding. Rule 56, however, has been held broad enough to encompass cross-claims between co-parties in the ordinary admiralty libel, and is similarly broad enough to allow cross-claims in admiralty limitations. Furthermore, admiralty courts may adopt a cross-claim procedure without the express sanction of a rule of this Court.

1. It is true that in its inception Rule 56 was intended to apply only to the impleader of parties in cross-libels on marine collisions. As petitioner points out (Br. 14), the rule, as first promulgated, codified a decision by Judge Addison Brown allowing such impleader in *The Hudson,* 15 Fed. 162 (S. D. N. Y.), a collision case. Despite the fact that the rule by its terms was limited to collisions, Judge Brown had no

hesitancy in extending it by "analogy" to a cargo damage case (*The Alert,* 40 Fed. 836 (S. D. N. Y.)); from there, it was extended to any libel *in rem* or *in personam.*[20] Approximately 35 years later, this Court took advantage of the 1920 revision of its rules to codify this long standing expansion in the coverage of the rule.

Much of admiralty procedure has been built up "by analogy" to one or more of this Court's rules, although, as we will see, the drawing of such an "analogy" is not a prerequisite to the adoption of a district court admiralty rule. Interrogatories between cross-claimants are allowed by analogy to Rule 56 (*The Cleona,* 37 F. 2d 599 (S. D. N. Y.)); there is no joinder provision comparable to F. R. C. P. 20 (a), yet joinder is permitted in admiralty (2 Benedict (6th ed.) § 246; see also *id.,* § 228); actions are consolidated to facilitate disposition of all claims arising from a single transaction, but there is no rule comparable to F. R. C. P. 42 (a) (*id.,* § 354). Further examples from the reports and the district court rules could easily be multiplied. See, *e. g.,* the additional instances cited in *Dowling* v. *Isthmian S. S. Corp.,* 184 F. 2d 758, 777, 778, fn. 61 (C. A. 3); and notes to the Uniform Admiralty Rules adopted by the Southern and Eastern Districts of New York. 5 Benedict (6th ed.) 1956 Supp. pp. 13–25.

What is most significant here is that Rule 56 itself has been cited as the basis for the long established

[20] A detailed discussion of the history of Rule 56 and admiralty impleader can be found in Volume 3 of Moore's *Federal Practice* (2d ed.), pp. 450–456.

practice of allowing cross-claims between co-parties in libels *in rem* and *in personam*, although strictly speaking the rule is silent as to such claims. *O. Maire, Inc.* v. *The Yaka*, 79 F. Supp. 659 (S. D. N. Y.); *Lamborn & Co.* v. *Compania Maritima Del Nervion*, 19 F. 2d 155, 156 (S. D. N. Y.); *The Providence*, 293 Fed. 595 (D. R. I.).[21] We have also seen that in the first reported case dealing with impleader and cross-claims in limitation (*The City of Boston*, 182 Fed. 171 (D. Mass.); *In re Eastern Dredging Co.*, 182 Fed. 179 (D. Mass.)), Judge Dodge (182 Fed. at 173, 183) allowed both impleader and cross-claims "following the analogy of admiralty rule 59 [Rule 56]" (*supra*, p. 20).

2. The practice of expanding admiralty procedures by analogy to one or more of this Court's rules illustrate the truism that the general admiralty rules do not exhaust allowable admiralty procedures, and that both Congress and the Court have deliberately left the lower courts free, within the framework of the general rules, to develop their own procedures to meet

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[21] Sometimes, however, Rule 50 is relied upon, as it might have been in this case. See *The Lysefjord*, 263 Fed. 623 (S. D. N. Y.; *The Cleona*, 37 F. 2d 599 (S. D. N. Y.); *Moore-McCormack Lines, Inc.* v. *McMahon*, 235 F. 2d 142 (C. A. 2).

The leading case allowing cross-claims between co-parties by service on counsel is *The Eliza Lines*, 61 Fed. 308 (C. C. D. Mass.). The claims were allowed without reference to either Rule 50 or 56, the court stating (*id.* at 322):

"The rule on this point in admiralty must be even more liberal than in equity, as the former regards mere matters of form even less than the latter, and is even more disposed than the latter to adjudicate whatever rights come before it, when jurisdiction has once attached, so far as they can be justly adjudicated."

the particular needs of the admiralty in their jurisdiction. This is reflected not only by Rule 44 (stating that "In suits in admiralty in all cases not provided for by these rules or by statute, the District Courts are to regulate their practice in such manner as they deem most expedient * * *, not inconsistent with these rules,") but also by opinions of this Court expressly stating that its rules were not intended to exhaust the procedures employed in admiralty limitation (*Ex parte Slayton,* 105 U. S. 451, 452; *The Scotland,* 105 U. S. 24; *supra,* pp. 15–16), as well as by a multitude of cases in the lower admiralty courts.

American admiralty courts inherited from the civil law of England a body of procedural precedents of great elasticity, and an extremely flexible rule-making power. *Dowling* v. *Isthmian S. S. Corp.,* 184 F. 2d 758 (C. A. 3) certiorari denied, 340 U. S. 935. It was not until 1842 that this Court was given authority to promulgate general rules to create a desirable degree of uniformity in the essentials of admiralty practice. The power of the admiralty courts, however, to create their own practice within the framework of the general rules remained unaffected. *Dowling* v. *Isthmian S. S. Corp., supra; Boston Ins. Co.* v. *City of New York,* 130 F. 2d 156 (C. A. 2); *Welsh* v. *Erie R. Co.,* 39 F. 2d 869 (C. A. 6); *The Epsilon,* 6 Ben. 378, 8 Fed. Cas. 744, No. 4,506 (E. D. N. Y.); *The Hudson,* 15 Fed. 162 (S. D. N. Y.); *The Alert,* 40 Fed. 836 (S. D. N. Y.). Cf *E. J. Dupont de Nemours & Co.* v. *Vance,* 19 How. 162, 171–172; *Krauss Bros. Lumber Co.* v. *Dimon Steamship Corp.,* 290 U. S. 117, 124; *Archawski* v. *Hanioti,* 350 U. S. 532, 534.

Thus, the court below as well as the Second Circuit in *Moore-McCormack Lines, Inc.* v. *McMahon, supra,* p. 25, were following a long and distinguished tradition when they referred to the "analogy" of the general rules to support cross-claims in admiralty limitation, although such a reference was unnecessary in view of Rule 44 and long-existing practice. It follows that, while long precedent justified a reference to Rule 56 to support such claims, the court below was not prohibited merely by the absence of express authority in Rule 56 or other rules of this Court from allowing cross-claims between co-parties in limitation proceedings.

In what follows, we shall show that there is no warrant for retrogression to a more rigid practice at this stage in the development of admiralty procedure.

II

CROSS-CLAIMS IN LIMITATION PROCEEDINGS ARE NECESSARY TO ENSURE THE EFFECTIVENESS OF THE CONCOURSE, AS WELL AS TO PROTECT THE RIGHTS OF PARTIES GENERALLY

Thus far, we have sought to show that admiralty has pursued a liberal policy in allowing cross-claims in limitation and that the recent holdings of the court below and the Second Circuit merely reiterate a long, if not universally, established principle that such claims will be heard. Recognizing, however, that this Court, which is vested with plenary control over admiralty procedure (*Wilburn Boat Co.* v. *Fireman's*

Ins. Co., 348 U. S. 310, 314), confronts the question for the first time, we undertake to weigh the practical and procedural necessities that have led to the development of the rule adopted by the court below.

In general, it can be said that the considerations which led the Second Circuit and the district courts of that circuit to develop a liberal cross-claim procedure in admiralty limitation are equally, if not more, persuasive today. The necessities of admiralty practice offer a convincing argument for adoption of the same cross-claim practice in admiralty limitation which is available in the bankruptcy and receivership concourses, as well as civil and admiralty practice generally. No justification can be found for return to a more rigid procedure.

A. THE PURPOSE OF ADMIRALTY LIMITATION WILL BE FULLY SERVED ONLY IF CROSS-CLAIMS ARE PERMITTED

This Court, in *Hartford Accident & Indemnity Co.* v. *Southern Pacific Co.*, 273 U. S. 207, 215–218, has recognized two main advantages of the limitation proceeding: (1) to permit the shipowner, if found liable, to establish his eligibility for the liability limitation provided by federal law; and (2) to provide a forum where all persons interested in a collision or other marine accident can obtain a "settlement of the whole controversy over such losses as are comprehended within it" (*id.* at 215–216). Cf. *Maryland Casualty Co.* v. *Cushing*, 347 U. S. 409, 415, 416.

Hartford Accident was a unanimous holding that an admiralty court retains jurisdiction over the parties to a limitation proceeding even after it has denied the petition both exoneration and limitation of liability. In the course of its opinion, this Court stated (*id.* at 216):

> The proceeding partakes in a way of the features of a bill to enjoin a multiplicity of suits, a bill in the nature of an interpleader, and a creditor's bill. It looks to a complete and just disposition of a many cornered controversy * * *.

After concluding that the statute must be given "a very broad and equitable construction for the purpose of carrying out its purpose" (*id.* at 215), the Court commented (*id.* at 217):

> If Congress has constitutional power to gather into the admiralty court all claimants against the vessel and its owner, whether their claims are strictly in admiralty or not, as this court has clearly held, it necessarily follows as incidental to that power that it may furnish a complete remedy for the satisfaction of those claims by distribution of the *res* and by judgments *in personam* for deficiencies against the owner, if not released by virtue of the statute.
>
> Such a conclusion is quite in accord with the rules governing equity procedure in general conformity with which this limitation of liability statute has been construed and enforced. Where a court of equity has obtained jurisdiction over some portion of a controversy, it may and will in general proceed to decide all the issues and award complete relief * * *.

Both the holding and the language of Chief Justice Taft's *Hartford Accident* opinion were reaffirmed by Chief Justice Hughes, speaking for the Court, in *Just* v. *Chambers,* 312 U. S. 383, 385–397, also a unanimous decision. These opinions recognize the close analogy of admiralty limitation to equity receiverships, and the desirability of having all claims disposed of in a single proceeding, where possible. See also *Maryland Casualty Co.* v. *Cushing,* 347 U. S. 409, 413–423; *Black Diamond S. S. Corp.* v. *Stewart & Sons, Ltd.,* 336 U. S. 386, 399–401 (Mr. Justice Jackson dissenting); *In re Morrison,* 147 U. S. 14, 34.

This Court, therefore, has recognized that one of the chief values of admiralty limitation is to provide a forum in which all claims against the shipowner arising from a single maritime incident or accident can be resolved in a single proceeding. If the shipowner must bring an independent action to establish and collect on an offsetting claim, or if the claimant cannot obtain a final adjudication of his rights and liabilities in the limitation proceeding, the purpose of the action will be frustrated to that extent, and its utility thereby diminished. The claims of the owner or of other claimants, arising from the event or incident which is the subject of the limitation concourse, can and should be resolved in one proceeding, where the claimants are already before the court and the decree will be *res judicata* as to their respective rights. *Phelps* v. *McDonald,* 99 U. S. 298, 308.

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B. WHEREVER POSSIBLE, ALL CLAIMS ARISING FROM A SINGLE EVENT OR TRANSACTION SHOULD BE ADJUDICATED IN A SINGLE PROCEEDING

1. No dictate of modern pleading theory is more generally accepted than the desirability wherever possible of adjudicating all related claims in one proceeding. Clark, *Code Pleading* (2d ed.), §§ 60, 61, 64. This is the basic policy underlying Rules 13 and 14 of the Federal Rules of Civil Procedure. 3 Moore, *Federal Practice* (2d ed.), pp. 5–13, 407–414. Thus, for example, in a proceeding at law, a party having a counterclaim against a claimant arising out of the same subject matter of the original claim is not only permitted to assert its counterclaim in the proceeding but is generally *required* to do so or forfeit the counterclaim. Rule 13, *supra*. The practice of adjudicating all related claims in a single proceeding is so well settled that at first sight it is somewhat surprising to meet the argument that the admiralty concourse is different. Admiralty courts from time immemorial have led in the development of a flexible practice, adapted to the general conditions of maritime litigation, but capable of adjustment to the needs of special circumstances.[22]

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[22] See Woolsey, D. J., in *The Cleona*, 37 F. 2d 599, 600 (S. D. N. Y.):

"In the first place, it must be remembered that, fortunately, admiralty practice is plastic. It is largely judge-made, and consequently not technical—in fact, it is less technical than equity practice. Broadening from precedent to precedent, and based on a wisely administered convenience, admiralty practice has always been prepared to cope with new situations as they have arisen. * * * Whilst the practice thus formed on precedent has from time to time been embodied in rules by the Supreme Court which have caused a wise procedure in one court to be made uni-

The classic libel proceeding *in rem* or *in personam* for many years has provided a forum in which all claims arising from a single event or marine accident can be finally adjudicated. A party entering such a proceeding voluntarily or by the route of admiralty impleader is subject to suit by service on his counsel by any other party on any claim related to the original claim which he brought, or on which he was joined. See *The Eliza Lines,* 61 Fed. 308, 324 (C. C. D. Mass.); *The City of Boston,* 182 Fed. 171 (D. Mass.); *Lamborn & Co.* v. *Compania Martinia Del Nervion,* 19 F. 2d 155 (S. D. N.-Y.); *The Cleona,* 37 F. 2d 599 (S. D. N. Y.); *Esso Standard Oil Co.* v. *United States,* 174 F. 2d 182 (C. A. 2); Rule 17, *Uniform Admiralty Rules* (E. and S. D. N. Y.), 5 Benedict (6th ed.) 1956 Supp., p. 19. Significantly enough, as noted in

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versal in the admiralty courts of the United States, there has never been any tendency in the rules which the Supreme Court has promulgated to limit the freedom of the District Courts in adopting new rules or principles of admiralty practice on appropriate occasion, provided the practice adopted does not conflict with the Supreme Court rules."

See also *The Epsilon*, 6 Ben. 378, 8 Fed. Cas. 744, No. 4506.

The origin of much modern federal civil procedure lies in admiralty. 3 Moore, *Federal Practice* (2d ed.), p. 405. It is probable that many characteristics of American admiralty practice can be traced to its development in district courts located in a small number of American seaport cities, in which there is a close knit bar of specialists, and where the truly maladroit lawyer or ingenuous shipowner is a relative rarity. In these conditions, which largely continue today, an extremely flexible practice is both possible and desirable. The special solicitude which the admiralty courts have always shown for seamen, who obviously form a special class lacking the resources and experience of ship operators, is a further example of the flexibility inherent in admiralty practice.

more detail, *supra,* pp. 37–39, this practice has never been embodied in a general rule, but is often permitted "by analogy" either to Rule 50 or to Rule 56 which do not specifically provide for it. *The Cleona,* 37 F. 2d 599 (S. D. N. Y.); *Lamborn & Co.* v. *Compania Martinia Del Nervion,* 19 F. 2d 155; *O. Maire, Inc.* v. *The Yaka,* 79 F. Supp. 659 (S. D. N. Y.). It is possible therefore for any party with a claim or interest in the subject matter of the libel to obtain a complete disposition of his rights and obligations in one proceeding without the necessity of ancillary suits. A separate suit must be brought only where a claim arises against a person (1) not a party to the libel and (2) not subject to impleader within the jurisdiction.

The limitation proceeding, in addition to its concourse feature, also serves the function of a cross-libel—namely, a determination of the respective rights and liabilities of the petitioner and the claimants. Thus, the presence of the concourse should logically make no difference in the parties' right to a final settlement of their obligations through the use of cross-claims "by analogy" to Rule 56. See *supra,* pp. 36–40.

2. In its dual function, the limitation proceeding is very like its closest procedural analogies, bankruptcy proceedings and equity receiverships, with one significant difference, to be discussed later. All three proceedings have the common purpose of facilitating the marshalling of the debtor's or petitioner's assets and the *pro rata* distribution of a limited fund to creditors.

In 1935, this Court was presented with the question whether an equity receiver could file a "compulsory" counterclaim (stemming from the same subject matter as the original claim) against a claimant in the receivership, in the absence of a statute or rule expressly allowing this. *Alexander* v. *Hillman,* 296 U. S. 222. While the receiver (the petitioner) argued "that by presenting their claims respondents submitted themselves to the jurisdiction of the court to grant affirmative relief * * *" (296 U. S. at 238), respondents relied primarily on the lack of any statute or rule establishing venue for a counterclaim. This Court held that "By presenting their claims respondents subjected themselves to all the consequences that attach to an appearance * * *" (*id.* at 241), and could be held to answer for any counterclaim arising from the subject matter of the proceeding (*id.* at 242), "in harmony with the rule generally followed by courts of equity that having jurisdiction of the parties to controversies brought before them, they will decide all matters in dispute and decree complete relief. * * *" (citing *inter alia Hartford Accident Co.* v. *Southern Pacific,* 273 U. S. 207, 217–218). The Court reasoned that to require separate suits to determine rights directly related to these already at issue before the court (*id.* at 243) "would introduce additional elements of uncertainty and would involve unnecessary delay, work and expense."

Petitioner attempts to distinguish this holding on the ground that the fund before the court in a limitation proceeding is the petitioning owner's interest in

his vessel and her freight, and that cross-claims are unnecessary to establish or perfect this interest. But this is a distinction without a difference, since the true subject matter of a limitation proceeding (unlike the receivership) is not petitioner's interest in its vessel, but rather the marine disaster or incident which results in potential liability to the limitation petitioner and other parties. The sole subject of the receivership is the distribution of the estate, and the claimants are entitled only to recover their proportionate share of the estate. In a limitation proceeding, however, in which the liability of all parties must be determined, claimants have a legitimate interest in recovering against any parties found at fault in the proceedings, regardless of the existence or extent of the "fund" which limits the liability of the initial petitioner. This being the case, there is no more reason to require separate suits when someone other than the limitation petitioner is found at fault in admiralty limitations, than there is to require the equity receiver to sue separately to perfect the *res* which he is distributing. Thus, while the subject matter of the two proceedings differs—the first being the distribution of debtor's estate, and the second, a maritime occurrence giving rise to a variety of related liabilities and damage claims—the same considerations of convenience, certainty, and equity support the allowance of cross-claims in both.[23]

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[23] See also note 25, *infra*.

Petitioner's attempted distinction of *Hillman*, on the ground that counterclaims are necessary for complete distribution of the estate, but not of the limitation fund, overlooks the fact that a

The rule of the *Hillman* case has been adopted, after an initial uncertainty, in summary proceedings in bankruptcy where the trustee may file compulsory counterclaims against claimants in the summary proceeding.[24] Not only can the bankruptcy trustee counterclaim, but claimants in bankruptcy summary proceedings may obtain determination of their rights *inter se* respecting property within the court's jurisdiction, since they are held to have consented to such jurisdiction by filing their claims. *Collier on Bank-*

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situation analogous to the receivership is presented when both vessels are found at fault in limitation proceedings following a collision. In such a case, the petitioner is entitled to limit only after the damages to the two vessels have been offset. *The North Star*, 106 U. S. 17. If a claimant is entitled to recover one half the difference between his and petitioner's damage, his recovery should be treated as part of the *res* before the court, and other claimants should be able to reach this part of the "fund" by a cross-claim against the claimant. This is precisely what was allowed in *In re United States Steel Products Co.*, 24 F. 2d 657 (C. A. 2) (see *supra*, pp. 23–24).

[24] *Conway* v. *Union Bank of Switzerland*, 204 F. 2d 603 (C. A. 2), certiorari dismissed *sub nom. Silesian Holding Co.* v. *Union Bank*, 350 U. S. 978; *In re Solar Mfg. Corp.*, 200 F. 2d 327 (C. A. 3), certiorari denied *sub nom. Marine Midland Trust Co.* v. *McGirl*, 345 U. S. 940; *Florance* v. *Kresge*, 93 F. 2d 784 (C. A. 4); *Floro Realty & Inv. Co.* v. *Steem Elec. Corp.*, 128 F. 2d 338 (C. A. 8); *Bank of California Nat'l Ass'n* v. *McBride*, 132 F. 2d 769 (C. A. 9); *Inter-State Nat'l Bank of Kansas City* v. *Luther*, 221 F. 2d 382 (C. A. 10), certiorari dismissed, 350 U. S. 944.

The presently unsettled question as to whether a *permissive* counterclaim also can be brought by the trustee (cf. *Dwyer* v. *Franklin*, 227 F. 2d 152 (C. A. 7), certiorari denied, 350 U. S. 995) has no direct bearing on the issue of whether "compulsory" cross-claims (*i. e.*, those arising from the same subject matter as the initial claim) can be brought in limitation proceedings.

ruptcy (14th ed.) § 23.04.[25] Thus, in bankruptcy all claims between the trustee and rival claimants respecting the property which is the subject of the proceeding can be finally adjudicated without the necessity of supplemental plenary actions.

Under the decisions of the court below and the Second Circuit, admiralty limitation proceedings provide the same complete and final settlement of all liabilities arising from a single marine event, as do summary bankruptcy procedures in disposing of rights to the bankrupt's estate. Every consideration which can be cited to support the allowance of cross-claims in bankruptcy and receivership equally supports the rule adopted by the Second and Fourth Circuits. A determination as to rights to the debtor's property will be binding on all parties to the proceeding and the decree will be *res judicata* in any subsequent action, as the court below recognized (R.

[25] Petitioner (Br. 30) argues that the bankruptcy analogy is inapplicable or misleading because only cross-claims asserting rights to the debtor's property can be brought in bankruptcy, not all claims arising from transactions which in one or more respects involve the debtor's property. This would be more to the point if transactions of this type were the direct subject of the bankruptcy proceeding—which they clearly are not. There may be hundreds of transactions involved in a single bankruptcy affecting the debtor's assets in one or more respects, but which also raise a variety of other claims that would be both impractical and inequitable to try in the summary proceeding. In the limitation proceeding, in sharp contrast, only one transaction or event is involved—namely, the maritime accident or occurrence giving rise to damages. It is perfectly equitable and practical to try all the claims arising from this event in one proceeding; and this is why the real subject of the limitation proceeding is not the petitioner's "interest," but the underlying event.

85–86). Since the limitation petitioner's or the claimant's cross-claim must arise from the same subject matter as the claim or petition, the facts and legal issues governing the right to recover from a claimant are essentially the same facts and issues determining the claimant's rights against the petitioner. For this reason, the decree in limitation proceedings assessing blame or awarding exoneration will usually be *res judicata* of the petitioner's right to affirmative recovery. Similarly, rights of various claimants *inter se* on claims arising from the collision or other maritime subject matter of the proceeding must be first decided in order to determine relative rights of claimants in a *pro rata* distribution of the fund before the court; hence, the decree will usually be *res judicata* as to their mutual rights and liabilities.[26] Since the claimant is before the court, to

[26] We do not understand petitioner's (Br. 27) argument that a determination as to its fault might not be *res judicata* in a foreign forum, in contrast to the limitation petitioner's liability, which admittedly is finally determined by the limitation decree. A claimant will be found at fault in limitation only for acts arising from the collision or other subject matter of the proceeding. As in the case below, the admiralty court must necessarily assess the fault of all vessels involved in the proceeding, in order to determine the petitioner's liability, if only because of the admiralty rule providing for divided damages. See *The Adah*, 258 Fed. 377 (C. A. 2). Hence, a vessel-owner claimant necessarily submits itself to the court's jurisdiction for a determination of its own fault in seeking a determination of the petitioner's liability. For this reason, there can be no question that a foreign court, if it follows established principles, will give full effect to the findings of the limitation court. See Katzenbach, *Conflicts on an Unruly Horse: Reciprocal Claims and Tolerances in Interstate and International Law*, 65 Yale L. J. 1087, 1135.

require the petitioner or a claimant to bring a separate proceeding in the same or another jurisdiction would be an empty formalism, completely out of keeping with the basic character of admiralty practice.[27] This conclusion is confirmed by often reiterated principles that admiralty procedures should be inherently more flexible than equity procedures, and that the admiralty must at least keep abreast of equity in the convenience of its practice. *The Eliza Lines*, 61 Fed. 308, 322 (C. C. D. Mass.); *Richmond* v. *New Bedford Copper Co.*, 20 Fed. Cas. 738, 739, No. 11800 (D. Mass.); *Dowling* v. *Isthmian S. S. Corp.*, 184 F. 2d 758 (C. A. 3), certiorari denied, 340 U. S. 935.[28]

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[27] Petitioner (Br. 24–26) objects to the observation of the court below that claimants will be caused additional expense and inconvenience if they are not allowed to claim against petitioner in the Norfolk proceedings. What petitioner does not mention, however, but what the Fourth Circuit recognized (R. 85), is that the claimants would have to bring a second, independent action after termination of the Norfolk limitation proceedings in which petitioner's fault had been established; this proceeding would necessarily involve additional expense and inconvenience, as well as lapse of time.

[28] The courts, in the absence (outside the Second Circuit) of a definitive rule providing for cross-claims, heretofore have made liberal use of consolidation, or combining the hearing of two or more limitation proceedings or cross-libels, to obviate time-consuming, expensive, and functionally useless collection suits. 2 Benedict (6th ed.) § 354; *Southern Pacific Co.* v. *United States*, 72 F. 2d 212, 214, 215 (C. A. 2).

The consolidation expedient, however, is unnecessarily clumsy, and is not available whenever, as must frequently be the case, the related suits are not all pending in the same district. For this reason, the device of consolidation is not an adequate substitute for the right to cross-claim in limitation proceedings, any more than it would be in bankruptcy or receivership.

III

THE AVAILABILITY OF CROSS-CLAIMS WILL NOT REDUCE THE EFFECTIVENESS OR THE FAIRNESS OF THE ADMIRALTY CONCOURSE

Petitioner's argument reduces finally to its assertion that (Br. 37–43), assuming cross-claims have been or could be prosecuted in limitation proceedings, it is unwise to allow them because of prejudice to claimants or the danger that foreign claimants will be reluctant to enter the proceeding. While the latter danger cannot entirely be discounted, we believe that, in fairness and practicality, any claimant who seeks affirmative recovery should be subject to offsetting or affirmative claims arising from the same occurrence. In actuality, there is little danger that foreign limitation claimants will be substantially deterred from filing claims. Nor can it be said that claimants will be unfairly prejudiced by the availability of a cross-claim procedure.

A. A CLAIMANT WHO SEEKS TO PRESS HIS CLAIM SHOULD NOT, IN FAIRNESS, BE IMMUNE IN THE SAME PROCEEDING FROM OFFSETS OR AFFIRMATIVE RECOVERY ON THE SAME TRANSACTION

The inequities of petitioner's position are evident, as the court below recognized (R. 87–88). Under petitioner's view, it could have filed a claim in the proceedings before the District Court in Norfolk and collected from the United States, if the United States had been found at fault. But if both vessels were found at fault, the United States not only could not have an affirmative recovery, but in addition would not even be entitled to offset its own damages against petitioner's claim. Instead, under petitioner's view, the United

States would have to bring an entirely unnecessary secondary action in England against the petitioner, in which the Norfolk decree would be *res judicata* under generally accepted principles, merely to obtain an offset.[29]

The passenger claimants (or seaman claimants, if there were any)[30] would be put to the same useless expenditure of time and money by the rule sought by petitioner. In order to collect from the petitioner after claiming in the United States' limitation proceeding, the passengers, in the event (1) either the United States vessel was exonerated (as in this case) or (2) both were found to blame, would have to bring a separate action in England, assuming that they could recover at all under British law.

Finally, the result urged by petitioner is entirely premised on the fact that it was the United States which sought a *concursus* at Norfolk. Had petitioner libeled the United States or its vessel in the same court on the exact claim on which it sought to

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[29] Further, it is at least open to question whether petitioner is a legal entity subject to suit at all in its own courts, although it claims it is not the British Government, and hence is subject to suit in the courts of this country. The United States has been notified through official channels that petitioner's vessel is not regarded as a vessel of the British Government within the coverage of the wartime "Knock for Knock" Agreement between the United Kingdom and the United States, 56 Stat. 1780. The British courts have not to our knowledge passed on the question whether petitioner is subject to suit as a private corporate entity, and it is at least doubtful whether a suit on a maritime cause of action would lie against it. Compare *Tamlin* v. *Hannaford*, [1949] 2 All E. R. 327 (C. A.), with the adverse comment on this decision in 12 Mod. L. Rev. 496.

[30] Cf. *Maryland Casualty Co.* v. *Cushing*, 347 U. S. 409.

recover here, it plainly would have been subject to cross-claims by any other party to the proceeding.

In the light of these considerations, we submit that only extreme danger to the limitation *concursus* or prejudice to its participants would justify the adoption of a rule which is so unfair and, at the same time (as we have shown), so contrary to every tenet of modern procedure and admiralty practice. It will be seen, however, that petitioner's forebodings of danger or prejudice are without substance.

B. A CLAIMANT IS NOT PREJUDICED BY BEING SUBJECTED TO OPPOSING CLAIMS IN ADMIRALTY LIMITATION

1. Petitioner argues (Br. 26) that limitation claimants will be prejudiced by being themselves denied the right to limit if they are subject to cross-claims in limitation. The argument is that a limitation claimant subject to a cross-claim might be barred from limiting his own liability by the six-month time limit provided by the 1936 amendments to R. S. 4285 (*supra*, p. 34).[31] In the first place, a claimant, if he

[31] Petitioner apparently has abandoned an argument, based on *Algoma Cent. & Hudson Bay Ry. Co.* v. *Great Lakes Transit* Corp., 86 F. 2d 708 (C. A. 2), which it pressed on this Court in seeking certiorari (Pet. 19), that a limitation claimant subject to an opposing claim may not be able to petition to limit his own liability in the same district. *Algoma*, a venue decision, held under this Court's Rule 54 that a claimant could not obtain venue in a district where he had not been sued, inasmuch as no cross-claim had been filed against him. Although the holding may have been unduly restrictive (cf. Judge Addison Brown's opinion, *In re Leonard*, 14 Fed. 53 (S. D. N. Y.)), the decision is in any event now outmoded inasmuch as Rule 54 was amended in 1948 (334 U. S. 869) to allow a limitation petition to be brought in any district

does not anticipate further claims and therefore does not need a *concursus,* probably can plead his right to limit (as a defense) at any time in the limitation proceeding. See *The H. F. Dimock,* 52 Fed. 598 (S. D. N. Y.), *supra*; *The Chickie,* 141 F. 2d 80 (C. A. 3).[32] If a claimant needs a concourse for his own protection, under Rule 54 and R. S. 4285 he is clearly entitled to file his own petition for limitation in the same district within six months after a cross-claim has been filed against him. Under the usual practice, this limitation proceeding would be consolidated with the original proceeding, and by this means all parties who desired it could obtain the benefit of both a *concursus* and a liberal cross-claim practice. 2 Benedict (6th Ed.) § 354.[33]

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court where the owner has not been sued and the vessel or its proceeds are not located in any district. Furthermore, if a cross-claim were filed against a claimant, he would be entitled to bring a limitation petition in the same district under Rule 54, even prior to the 1948 amendment. See *infra*, ff.

[32] The Third Circuit is the only circuit which has passed on this question, and as petitioner points out (Br. 26), there is a split in the district court holdings. The Third Circuit's decision, which was based on a detailed analysis of the history of the 1936 amendments, is, we submit, persuasive and states the correct view of the law.

[33] Petitioner points out that in this case it may be barred from obtaining limitation because it failed to petition for a limitation within six months of the cross-claims against it. In the first place, if the claims asserted against petitioner do not exceed its interest on its vessel and her freight, it can be fully protected by pleading limitation as a defense in the present proceeding, relying on *The Chickie*, 141 F. 2d 80 (C. A. 3), *supra*, which would no doubt be adopted by the Fourth Circuit. 3 Benedict (6th ed.), § 483. If petitioner needs a concourse, however, R. S. 4285 would appear to be a bar, unless the admiralty court relieved petitioner of the re-

2. It might be thought that foreign claimants will be put at a special disadvantage in having to submit to offsetting suits in exchange for a hearing of their claim against a limitation petitioner. If, in fact, this is a disadvantage, it is clearly justified by the strongest considerations of equity and fairness, as we have just pointed out (*supra*, pp. 53–55). Cf. *The Thekla*, 266 U. S. 328; *National City Bank* v. *Republic of China*, 348 U. S. 356. However, the foreign limitation claimants most frequently subject to offsetting claims are foreign shipowners which are usually doing business in and subject to suit in the United States, or whose vessels visit American ports.[34] It is a convenience rather than a burden to such claimants to have their liability determined in one proceeding, rather than in two or more separate suits, possibly in widely separated districts.

3. Petitioner also argues (Br. 18–19) that the flexible venue provisions of Rule 54, which allow a limitation petitioner, in effect, to pick his forum when no

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quirement of a timely petition—following *The Chickie's* holding that the substantive right to limit under R. S. 4283 (a) is not subject to the six-month time limit, and concluding that petitioner's failure was excusable in view of the alleged lack of a "settled" practice. Compare *Norwich Co.* v. *Wright*, 13 Wall. 104, 126. As to the propriety of such equitable relief, we express no opinion. In any event, whatever the equities of petitioner's position, its particular circumstances cannot be a decisive factor in the choice of a rule of procedure applicable to all limitation proceedings in the future.

[34] Petitioner, as an operator of ocean-going vessels, is atypical in this respect. Passengers and cargo shippers, the other two most prevalent types of limitation claimant, are not usually subject to opposing claims.

action has been brought against him, can work a hardship on potential claimants. As originally promulgated, Rule 54 allowed a petition to be filed only in a district where the owner had been sued or his vessel libeled. In 1889, Rule 54 was amended (130 U. S. 705) to permit, where no suit had been brought, a petition in the district where the vessel or its proceeds were located. The 1948 amendment (334 U. S. 869) allows a petition to be filed in any district, when none of the above is applicable. What petitioner does not mention is that this Court, in broadening the venue provisions in 1948, included a provision, comparable to 28 U. S. C. 1404, authorizing a district court in its discretion to transfer limitation proceedings to any district for the convenience of the parties. This provision obviously was intended to obviate possible prejudice to claimants resulting from an inconvenient forum. See Appendix, *infra*, p. 72.

C. CROSS-CLAIMS IN ADMIRALTY LIMITATION AFFORD AN ENTIRELY PRACTICAL PROCEDURE

Conversely, petitioner argues (Br. 36–39) that cross-claims are not practicable in admiralty limitations because foreign claimants would be discouraged from coming into American limitations proceedings if they anticipated claims against them, and that the concourse would be defeated because these claimants would be free to bring suit against the limitation petitioner elsewhere. It also points out that other maritime nations do not allow cross-claims in proceedings for limitation of liability. We submit that these factors, to the extent they pertain, are not de-

cisive, and certainly do not compel adandonment of the cross-claims procedure.

1. First, we have just pointed out that the foreign claimants most likely to be claimed against are usually subject to suit in the United States, and it is to their advantage, rather than otherwise, to have claims determined in the limitation proceeding. And since they are suable in the United States, they will usually have no choice but to enter the proceeding in order to protect their rights. Second, the major premise of petitioner's argument can be questioned. Although there is of course nothing which an American admiralty court can do to compel a foreign claimant, not a party, to respect its restraining order, as a matter of practice and comity foreign tribunals can be expected to give effect to such orders, as well as the final decrees in limitation proceedings. See *Algoma Cent. & Hudson Bay Ry. Co.* v. *Great Lakes Transit Corp.*, 86 F. 2d 708, 710 (C. A. 2); Stumberg, *Conflict of Laws* (2d ed.), pp. 130–133; Beale, *Conflict of Laws*, p. 1399.[35]

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[35] Compare *Report to Maritime Law Association* concerning proposed International Convention on Limitation of Liability of Shipowners (Maritime Law Association Document No. 388, April 1955, p. 3839):

"* * * Most ship casualties which give rise to limitation proceedings have a locale which makes recourse of the owner to his national courts (occasionally others) not inconvenient or prejudicial to those persons and interests having claims to assert. No reason is seen by your Committee why that *concursus* of all claimants which is the sure and equitable basis of all genuine limitation proceedings, should not be had in whatever country the owner may now lawfully initiate his proceeding. Under present day quick communication and transport conditions there should be no

Bankruptcy decrees discharging a bankrupt's debts against all creditors with notice present exactly the same question. It is uncertain whether a foreign court would honor a decree in a suit on a discharged obligation by a creditor who, despite notice, had not claimed in the bankruptcy proceeding. See 8 *Remington on Bankruptcy* (6th ed.) § 3312. Yet this uncertainty has not prevented the courts from allowing the bankruptcy trustee to counterclaim against foreign claimants. See *supra,* pp. 49–50. The bankruptcy analogy is a convincing indication, we believe, that petitioner's caveat is overdrawn.

In final analysis, the uncertain extent to which foreign claimants may be discouraged from appearing in American limitation is outweighed by the manifest advantages of the cross-claim procedure, and the obvious inequity of allowing the foreign claimant to recover without offsetting his own liability.

2. Petitioner also points out (Br. 38–43) that the courts of other maritime nations do not permit cross-claims in proceedings for limitations of shipowners' liability. Petitioner does not make clear why this fact forces litigants in American courts to forego such procedures, nor does it supply a reason why American admiralty procedure—as distinct from substantive maritime law—must duplicate that of other nations. There is good reason, in any case, why cross-claims are not available in other jurisdictions, a reason which

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claimants everywhere, or about their due representation. Such final decree as might be reached by the adjudicating court ought to be regarded throughout the world as *res judicata*—which indeed

points to the adoption of such procedure here, rather than, as petitioner believes, to its rejection.

Briefly stated, the continental limitation proceeding, as petitioner points out (Br. 41), is a pure concourse of claims. Unlike the American proceeding, it is not concerned with the determination of anyone's liability. In the continental courts, as well as in England, liability has already been determined either by admission or in earlier proceedings prior to the concourse. Hence, neither the liability of the petitioner nor that of any claimant is at issue in such proceedings, and there is no occasion for hearing or allowing claims between the parties. The continental proceeding thus is solely concerned with the distribution of a sum of money to rival claimants. If, in fact, the American proceedings were so limited, petitioner could contend with greater justice that it would be inappropriate to inject further liability issues. But in the American admiralty court, which must determine liabilities of the various participants in the maritime occurrence *inter se* as well as distribute the owner's interest (when he is found liable), there is no good reason for not allowing cross-recoveries since substantive rights and liabilities are being determined in that very proceeding.

The sharp distinction between the two types of proceeding is illustrated by British practice. Britain follows the continental rule that a ship owner is entitled to limitation only after he admits at least partial liability for the maritime collision or other occurrence involved. Marsden, *Collisions at Sea* (10th [illegible] 201-202. Although a formal admission

of liability apparently need not be included in the limitation petition (*The Amalia,* 8 L. T. 805, 1 Moo. PCC (NS) 471), such an admission must be made prior to entry of the limitation decree, for the British admiralty will not try the question of the owner's liability in the limitation proceeding. *Hill* v. *Audus,* 24 L. J. ch. 229, 69 ER 456; and cases cited at 30 Halsbury, *Laws of England* (2d ed.), p. 945. In the British practice, as reflected in the cases, the limitation concourse is usually initiated by the shipowner following a collision libel in which the liability of all parties is determined. *C. A. Van Eijck and Zoon* [1906] L. R. (App.) 489 (House of Lords); Marsden, *supra,* at p. 203. The subsequent proceedings are concerned solely with ascertaining the extent of the owner's interest, his right to limitation, and the *pro rata* distribution of that interest. *Hill* v. *Audus, supra; Carron Company, Pet.,* 23 Scot. L. R. 81.[36]

Since, in contrast, the American proceeding combines in one action what is, in effect, a cross-libel and one or more proceedings for the distribution of an owner's interest,[37] there is every reason for making ordinary cross-claims practice available, if it is at all possible to do so.

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[36] The British limitation proceeding is treated as a pure *concursus*, equivalent to an English bankruptcy proceeding. *Carron Company, Pet., supra; Rankine* v. *Raschen & Co.*, 14 Scot. L. R. 476.

[37] In the typical collision case, more than one shipowner will file a limitation petition, and, if possible, the proceedings are usually consolidated.

3. Cross-claims present no procedural problems in limitation practice in other respects. We have seen that liberal cross-claims procedures are employed without apparent difficulties in the two closely analogous concourse proceedings, receivership and bankruptcy. *Supra,* pp. 46–52. In determining a foreign claimant's liabilities, conflicts of laws problems will seldom arise, since the same law governs the liability of all parties to a single marine incident. Goodrich, *Conflict of Laws* (3d ed.), § 92; *The Belgenland,* 114 U. S. 355. The admiralty requirement of stays or security presents little or no problem, for, as we have pointed out, the petitioner's stipulation constitutes his security and can be increased where necessary; and if called for, claimants can be required to post security in responding to cross-claims under Rule 50. Questions of procedural detail arising in particular limitation proceedings can be left to the discretion of the individual courts, as in the past, in accordance with admiralty practice.

CONCLUSION

For the reasons stated, it is respectfully submitted that the judgment below should be affirmed.

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APPENDIX

LIMITATION OF SHIPOWNER'S LIABILITY ACT

(9 Stat. 635, R. S. 4281–4286, as amended, 46 U. S. C. 181–186)

PRIOR TO 1936 AMENDMENTS

R. S. 4283 (46 U. S. C. 183):

Liability of owner not to exceed interest. The liability of the owner of any vessel, for any embezzlement, loss, or destruction, by any person, of any property, goods, or merchandise, shipped or put on board of such vessel, or for any loss, damage, or injury by collision, or for any act, matter, or thing, loss, damage, or forfeiture, done, occasioned, or incurred without the privity, or knowledge of such owner or owners, shall in no case exceed the amount or value of the interest of such owner in such vessel,

SUBSEQUENT TO 1936 AMENDMENTS

R. S. 4283 (46 U. S. C. 183):

(a) The liability of the owner of any vessel, whether American or foreign, for any embezzlement, loss, or destruction by any person of any property, goods, or merchandise shipped or put on board of such vessel, or for any loss, damage, or injury by collision, or for any act, matter, or thing, loss, damage, or forfeiture, done, occasioned, or incurred, without the privity or knowledge of such owner or owners, shall not, except in the cases provided for in subsection (b) of this section, exceed the amount or

PRIOR TO 1936 AMENDMENTS	SUBSEQUENT TO 1936 AMENDMENTS
R. S. 4283 (46 U. S. C. 183)—Continued	*R. S. 4283 (46 U. S. C. 183)*—Continued
and her freight then pending.	value of the interest of such owner in such vessel, and her freight when pending. [R. S. 4283 was amended in 1936 (49 Stat. 1479) by the addition of subsections (b)–(f) placing a restriction on the owner's right to limit his liability for loss of life and personal injury to a minimum of $60.00 per vessel ton.]
R. S. 4284 (46 U. S. 184):	Unchanged.
Apportionment of compensation. Whenever any such embezzlement, loss, or destruction is suffered by several freighters or owners of goods, wares, merchandise, or any property whatever, on the same voyage, and the whole value of the vessel, and her freight for the voyage, is not sufficient to make compensation to each of them, they shall receive compensation from	

PRIOR TO 1936 AMENDMENTS	SUBSEQUENT TO 1936 AMENDMENTS
R. S. 4284 (46 U. S. 184)—Continued	
the owner of the vessel in proportion to their respective losses; and for that purpose the freighters and owners of the property, and the owner of the vessel, or any of them, may take the appropriate proceedings in any court, for the purpose of apportioning the sum for which the owner of the vessel may be liable among the parties entitled thereto.	
R. S. 4285 (46 U. S. C. 185):	*R. S. 4285 (46 U. S. C. 185)*:
Transfer of interest of owner to trustee. It shall be deemed a sufficient compliance on the part of such owner with the requirements of this chapter relating to his liability for any embezzlement, loss, or destruction of any property, goods, or merchandise, if he shall transfer his interest in such	The vessel owner, within six months after a claimant shall have given to or filed with such owner written notice of claim, may petition a district court of the United States of competent jurisdiction for limitation of liability within the provisions of this chapter and the owner (a) shall deposit with

PRIOR TO 1936 AMENDMENTS	SUBSEQUENT TO 1936 AMENDMENTS
R. S. 4285 (46 U. S. C. 185)—Continued	*R. S. 4285 (46 U. S. C. 185)*—Continued
vessel and freight, for the benefit of such claimants, to a trustee, to be appointed by any court of competent jurisdiction, to act as such trustee for the person who may prove to be legally entitled thereto; from and after which transfer all claims and proceedings against the owner shall cease.	the court, for the benefit of claimants, a sum equal to the amount or value of the interest of such owner in the vessel and freight, or approved security therefor, and in addition such sums, or approved security therefor, as the court may from time to time fix as necessary to carry out the provisions of section 183 of this title, or (b) at his option shall transfer, for the benefit of claimants, to a trustee to be appointed by the court his interest in the vessel and freight, together with such sums, or approved security therefor, as the court may from time to time fix as necessary to carry out the provisions of section 183 of this title. Upon compliance with the requirements of this section all claims and proceedings against the owner with respect to the matter in question shall cease.

PRESENT ADMIRALTY RULE 51 (ADOPTED JUNE 21, 1948. 334 U. S. 864. THE FULL TEXT OF THIS RULE IS SET FORTH IN PETITIONER'S APPENDIX, PP. 45–48)

The owner or owners of any vessel who shall desire to claim the benefit of limitation of liability provided for in the third and fourth sections of the Act of March 3, 1851 * * *, may file a petition in the proper District Court of the United States, as hereinafter specified. Such petition shall set forth the facts and circumstances on which limitation of liability is claimed, and pray proper relief in that behalf. * * * With his petition the petitioner may, if he so elects, file an interim stipulation, with sufficient sureties or an approved corporate surety, for the payment into court whenever the court shall so order, of the aggregate amount of the value of

FORMER ADMIRALTY RULE 51 (ADOPTED MARCH 7, 1921, AS AMENDED, 254 U. S. 25)

When any ship or vessel shall be libeled, or the owner or owners thereof shall be sued, * * * and he or they shall desire to claim the benefit of limitation of liability provided for in the third and fourth sections of the act of March 3, 1851 * * * the said owner or owners shall and may file a libel or petition in the proper district court of the United States, as hereinafter specified, setting forth the facts and circumstances on which said limitation of liability is claimed, and praying proper relief in that behalf;

PRESENT ADMIRALTY RULE 51, ETC.—continued

petitioner's interest in the vessel at the close of the voyage or, in case of wreck, the value of the wreckage, strippings or proceeds, and of any pending freight recovered or recoverable, * * *

Said court, having caused due appraisement to be had of the value of petitioner's interest in the vessel, or her wreckage, etc., and her freight shall make an order for the payment of the same into court, or for the giving of a stipulation, * * *

or, if the petitioner shall so elect, the court without such appraisement shall make an order for the transfer by the petitioner of his interest in such vessel, or her wreckage, etc., and freight to a trustee to

FORMER ADMIRALTY RULE 51, ETC.—continued

and thereupon said court, having caused due appraisement to be had of the amount or value of the interest of said owner or owners, respectively, in such ship or vessel, and her freight, for the voyage, shall make an order for the payment of the same into court, or for the giving of a stipulation, with sufficient sureties * * * for the payment thereof into court * * * whenever the same shall be ordered;

or, if the said owner or owners shall so elect, the said court shall, without such appraisement make an order for the transfer by him or them of his or their interest in such vessel and freight to a trustee to be appointed by

PRESENT ADMIRALTY RULE 51, ETC.—continued	FORMER ADMIRALTY RULE 51, ETC.—continued
be appointed by the court under the fourth section of said Act. * * *	the court under the fourth section of said act;
Upon the filing of such interim stipulation, or upon determination of value by appraisal and compliance with the court's order with respect thereto, or upon compliance with a surrender order, as the case may be, the court shall issue a monition against all persons asserting claims in respect to which the petition seeks limitation, * * *.	and, upon compliance with such order, the said court shall issue a monition against all persons claiming damages * * *.
* * * The said court shall also, on the application of the petitioner, make an order to restrain the further prosecution of all and any suit or suits against the petitioner and/or said vessel in respect to any claim or claims subject to limitation in the proceeding.	and the said court shall also, on the application of the said owner or owners, make an order to restrain the further prosecution of all and any suit or suits against said owner or owners in respect of any such claim or claims.

PRESENT ADMIRALTY RULE 54

(ADOPTED JUNE 21, 1948, 334 U. S. 869)

Courts Having Cognizance of Limited Liability Procedure.—The said petition shall be filed and the said proceedings had in any District Court of the United States in which said vessel has been libeled to answer for any claim in respect to which the petitioner seeks to limit liability; or, if the said vessel has not been libeled, then in the District Court for any district in which the owner has been sued in respect to any claim. When the said vessel has not been libeled to answer the matters aforesaid, and suit has not been commenced against the said owner, the said proceedings may be had in the District Court of the district in which the said vessel may be, but if said vessel is not within any district and no suit has been com-

FORMER ADMIRALTY RULE 54 [RULE 57]

(ADOPTED MAY 6, 1872, 13 WALL. XIII–XIV)

The said libel or petition shall be filed and the said proceedings had in any District Court of the United States in which said ship or vessel may be libelled to answer for any such embezzlement, loss, destruction, damage, or injury; or, if the said ship or vessel be not libelled, then in the District Court for any district in which the said owner or owners may be sued in that behalf. If the ship have already been libelled and sold, the proceeds shall represent the same for the purposes of these rules.

PRESENT ADMIRALTY RULE 54—continued	FORMER ADMIRALTY RULE 54 [RULE 57]—con.
menced in any district, then the petition may be filed in any District Court. The District Court may, in its discretion, transfer the proceedings to any district for the convenience of the parties. If the vessel shall have already been sold, the proceeds shall represent the same for the purposes of these rules.	